

EXHIBIT 1

INTRODUCTION

Respondent Kurt Scholberg is a member of the Planning Commission for the County of Sierra. He assumed office on February 1, 2001, and has served continuously since his appointment. Pursuant to section 87203, every person who holds an office that is described in section 87200 is required to file an annual statement of economic interests each year, disclosing his or her reportable economic interests held during the preceding calendar year.

For purposes of this Default Decision and Order, Respondent's violations of the Act are stated as follows:

COUNT 1: As a member of the Planning Commission for the County of Sierra, Respondent Kurt Scholberg failed to file a 2001 annual statement of economic interests by the April 2, 2002 due date, in violation of section 87203 of the Government Code.

STATEMENT OF THE CASE

An enforcement action was initiated against Respondent Kurt Scholberg with a Report in Support of a Finding of Probable Cause being served on Respondent by certified mail and regular mail on November 14, 2003. Along with the Report in Support of a Finding of Probable Cause, Respondent was served with documents explaining the administrative enforcement process and informing him that he had 21 days in which to request a probable cause conference with the Executive Director of the Fair Political Practices Commission (the "FPPC"), and to file a written response to the probable cause report, to present any defenses that he may have. Respondent did not request a probable cause conference, or file a written response to the probable cause report. On February 11, 2004, Executive Director Mark Krausse issued an Order Finding Probable Cause, as to the one count alleged in the probable cause report. On February 18, 2004, the Order Finding Probable Cause was served on Respondent by mail.

On June 30, 2004, Respondent was personally served with an Accusation in this matter. Along with the Accusation, Respondent was served with a "Statement to Respondent," which explains the statutory requirement that Respondent must return a Notice of Defense within 15 days or else he will have waived his right to a hearing. Also served on Respondent were two copies of the Notice of Defense form, a copy of the Order Finding Probable Cause, and copies of the relevant portions of the Act.

Respondent did not file a Notice of Defense within the 15 day response period, and the Enforcement Division has not received any communication from Respondent since he was served with the Accusation.

THE ADMINISTRATIVE PROCEDURE ACT

Pursuant to the California Administrative Procedure Act (the “APA”)¹, a respondent is entitled to a hearing on the merits of an Accusation if the respondent files a Notice of Defense within 15 days after service of the Accusation. (Section 11506.) The APA further provides that a respondent’s failure to file a Notice of Defense within 15 days after service of an Accusation constitutes a waiver of the respondent’s right to a hearing. (Section 11506, subdivision (c).) A default decision may be issued if the respondent fails to file a Notice of Defense within 15 days of service of the Accusation (Section 11520, subdivision (a).)

On June 30, 2004, the Accusation in this matter was personally served on Respondent. Proof of service of the Accusation is attached hereto as Attachment A. Along with the Accusation, the Enforcement Division served Respondent with a “Statement to Respondent,” which notified him that he could request a hearing on the merits and warned him that, unless he filed a Notice of Defense within fifteen days of service of the Accusation, he would be deemed to have waived his right to a hearing. Respondent has failed to file a Notice of Defense.

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in section 81002, subdivision (c), is to ensure that the assets and income of public officials, that may be materially affected by their official actions, be disclosed, so that conflicts of interest may be avoided.

In furtherance of this purpose, section 87203 requires every person who holds an office described in section 87200 to file, at a time specified by the Commission’s regulations, an annual statement of economic interests disclosing his or her reportable investments, interests in real property, and sources of income held at any time during the preceding calendar year. A member of a planning commission is an office described in section 87200. Under regulation 18723, subdivision (b)(2), the due date for a county planning commissioner to file an annual statement of economic interests is April 1st of each year, or the next business day after April 1st, if April 1st falls on a Saturday, Sunday or official holiday.

Under section 87500, subdivision (g), a planning commissioner must file his or her statements of economic interests with the planning commission, which shall retain a copy of the statement and forward the original to the Fair Political Practices Commission, which is the filing officer for members of planning commissions.

SUMMARY OF THE FACTS

According to records maintained by the County of Sierra, Respondent assumed office as a member of the Sierra County Planning Commission on February 1, 2001, and has served continuously since his appointment.

¹ The California Administrative Procedure Act is contained in Government Code sections 11370 through 11529.

At all relevant times to this matter, Respondent was a member of the Sierra County Planning Commission.

Failure to Timely File a 2001 Annual Statement of Economic Interests

As a member of the Sierra County Planning Commission, Respondent was required by section 87203 to file a 2001 annual statement of economic interests by April 2, 2002, because April 1st fell on a holiday in 2002, disclosing his reportable investments, interests in real property, and sources of income held at any time during the preceding calendar year.

On February 22, 2002, the Sierra County Clerk's office sent a notice to Respondent, informing him that his 2001 annual statement of economic interests was due by April 2, 2002.

According to records maintained by the SEI Unit of the Technical Assistance Division of the FPPC (the "SEI Unit"), Respondent failed to file a 2001 annual statement of economic interests by April 2, 2002.

On May 29, 2002, Heather Foster, Chief Deputy Clerk-Recorder for Sierra County, sent Respondent a letter, advising him that his 2001 annual statement of economic interests was past due.

On June 22, 2002, Bonita Kwong, of the SEI Unit, sent a letter to Respondent, informing him that his 2001 annual statement of economic interests was past due, and asking him to file the statement within 30 days.

On August 2, 2002, Ms. Kwong sent a second letter to Respondent, informing him that his 2001 annual statement of economic interests remained past due, and advising him that his failure to file would be referred to the Enforcement Division, if the delinquent statement was not received within ten days.

In spite of these notices, according to records maintained by the SEI Unit, Respondent still failed to file a 2001 annual statement of economic interests. The matter was then referred to the Enforcement Division.

On October 2, 2002, and October 4, 2002, Mary Ann Kvasager, the SEI Coordinator for the Enforcement Division, attempted to contact Respondent by telephone. On two occasions Ms. Kvasager left messages for Respondent explaining that his 2001 annual statement of economic interests was past due, and instructing him to file the statement immediately.

According to filing records maintained by the SEI Unit, Respondent has not filed a 2001 annual statement of economic interests.

By failing to file a 2001 annual statement of economic interests by April 2, 2002, Respondent violated section 87203.

CONCLUSION

This matter consists of one count of violating section 87203, which carries a maximum administrative penalty of Five Thousand Dollars (\$5,000). Because Respondent has failed to bring himself into compliance with the Act, and has not responded to any of the Enforcement Division's attempts at settlement, this matter is not being resolved under the SEI Expedited Procedures adopted by the FPPC in July 1999.

The administrative penalty for SEI filing violations resolved outside of the SEI Expedited Procedures program historically has been determined on a case-by-case basis, considering the aggravating and mitigating factors present. In this case, Respondent has not filed a 2001 annual statement of economic interests, and has failed to respond to the Enforcement Division's attempts to resolve this matter. Therefore, a penalty that reflects the aggravating factors of this case, as well as Respondent's continuing non-compliance with the Act, is appropriate.

Accordingly, the facts of this case justify imposition of an administrative penalty of One Thousand Five Hundred Dollars (\$1,500).